EMPEREE INDUSTRIES SDN. BHD.

v.

GENAGCO SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[CIVIL SUIT NO. C 5322 OF 1985]
20 OCTOBER 1986

COMMERCIAL LAW: *Goods sold and delivered - Summary judgment - Whether the goods were ordered by the defendants or by the defendant's managing director for himself.*

This was an appeal against the decision of the Senior Assistant Register ordering the defendants to pay the plaintiffs the sum of RM114,388.96 together with interest and costs. The goods in question were 84 bundles of sawn keruing timber. The plaintiffs are suppliers of timber and the defendants are timber traders. The plaintiffs' claim was for goods sold and delivered. The defendants contended that they had not ordered the timber, but that it was one Chieng Hieng Ung (their managing director) who had ordered it for himself and required the plaintiffs to deliver the bundles to the defendants and that they only accepted the delivery on behalf of Chieng and that therefore they were not responsible for the cost of the timber.

Held:

[1] The defendants have not even attempted to explain away any of those documents exhibited in the application for summary judgment namely delivery orders, invoices, the statement of account and the 3 letters. If in fact they had not ordered the goods surely they would have done something about the delivery order erroneously being addressed to them and they would also have violently protested when they were invoiced for somebody else's order.

[2] The Court cannot overlook the unchallenged contents of those 3 letters two of which place on record what amounts to be an admission of the debt.

[3] There was no connection between the documents namely the telex dated 5 February 1985 and a letter dated 25 April 1985 and the claim of the plaintiffs.

[4] The deliveries relied on by the plaintiffs were pursuant to a contract with the defendants because of the unprotested invoices and the 3 letters from the plaintiffs to the defendants.

[Appeal dismissed with costs.]

For the defendants/applicants - B. Rajadurai; M/s. Abu Seman & Co.
For the plaintiffs/respondents - Teh Boon Eng; M/s. Teh & Associates

JUDGMENT

VC George J:

The plaintiffs' claim is for RM114,388.96 for goods sold and delivered. A statement of defence was filed. The plaintiffs took out O. 14 proceedings and obtained summary judgment for the amount claimed with interest and costs. The defendants have appealed against that order.

The goods in question were 84 bundles of sawn keruing timber. The plaintiffs are suppliers of timber and the defendants are timber traders.

The defendants' contention is that they had not ordered the timber. They say that it was one Chieng Hieng Ung (who turned out to be their managing director) who had ordered the timber for himself and that he had required the plaintiffs to deliver the bundles to the defendants. They had accepted delivery on behalf of Chieng and were not responsible for the cost of the timber.

In support of their application for summary judgment the plaintiffs exhibited all the delivery orders in respect of the timber supplied the price for which they are suing for. Each of the delivery orders is addressed to "Messrs. Genagco Sdn. Bhd." Mr. chieng's name is not mentioned. Receipt of each delivery has been acknowledged. The plaintiffs also exhibited the invoice addressed and sent to the defendants in respect of 84 bundles of keruing timber. The amount invoiced for was RM114,388.96. The calculation used to arrive at that amount is shown in the invoice. The invoice was dated 17 June 1985. This was followed by a statement of accounts dated 30 June 1985 again addressed and sent to the defendants. Then come 3 letters sent by the plaintiffs to the defendants in respect of the outstanding amount. In one of the letters it has been placed on record that one Mr. Fong of the defendant company had stated that part payment of the amount invoiced had been effected. In another that arrangement would be made for payment to be made as soon as possible.

In opposing the O. 14 application the defendants have not even attempted to explain away any of those documents. If in fact they had not ordered the goods surely they would have done something about the delivery order erroneously being addressed to them. Even overlooking that, there is the invoice which cannot be overlooked - surely if the defendants had not ordered the goods they would violently protested when they were invoiced for somebody else's order. And even if I can somehow overlook that omission I cannot see how I can overlook the unchallenged contents of those 3 letters two of which place on record what amounts to be an admission of the debt.

The defendant appear to rest their case for having the claim referred to trial:-

(1) On their contention that in the timber business the fact that delivery was made to a party does not necessarily mean that it was pursuant to contract entered into by that party with the party delivering the timber; and (2) on the strength of a telex dated 5 February 1985 and a letter dated 25 April 1985 exhibited as LL-1 & LL-2 to encl. (6).

I fail to see the connection between these documents and the claim of the plaintiffs. The telex appears to be from Chieng to the plaintiffs confirming that the defendants ("We") have sold keruing timber to the plaintiffs. The instant case is in respect of timber sold by the plaintiffs to the defendants. In the absence of any explanation by the defendants as to the import of this telex I have to assume that it refers to some other transaction. The letter of 25 April 1985 appears to have some reference to the said telex. Its relevance *vis-a-vis* the plaintiffs' claim is not explained.

The former of the contentions might at best have the effect of explaining away the delivery orders but in the face of the unprotested invoice and those 3 letters from the plaintiffs to the defendants, it has to be concluded that in the case of those deliveries that the plaintiffs rely on, such deliveries were pursuant to a contract with the defendants.

The appeal is dismissed with costs.

Also found at [1987] 1 CLJ 477